IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 501 of 2004
With
CRIMINAL APPEAL No. 1208 of 2004
With
CRIMINAL APPEAL No. 1335 of 2004
With
CRIMINAL APPEAL No. 1910 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAHLADBHAI PRABHUDAS PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PM THAKKAR with MR HARESH N JOSHI and Mr Yogini Acharya for Appellant(s) : 1,
MR AD OZA, PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA
Date : 21/10/2005
COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Criminal Appeal Nos. 501, 1208, 1335 and 1910 of 2004 are directed against the orders of the learned Special Judge (POTA), Ahmedabad rejecting the applications of the appellants for bail pending trial in POTA Case No. 3 of 2004 arising out of I CR No. 11/2003 registered at the DCB Crime Branch Police Station, Ahmedabad for the offences punishable under Sections 120-B, 121, 121C and 122 of IPC and for the offences punishable under Sections 3(3), 20(1) and 22 of the POTA and also for the offences punishable under Sections 25(1)(A)(A) and Section 29 of the Arms Act.

2. The appellants herein are accused Nos. 3, 4, 5 and 7. The dates on which the present appellants were arrested and the dates on which their bail applications came to be rejected are as under :-

Appeal No. of 2004	Accused No.	Name of the Accused	Date of Arrest	Date of decision on the bail application
501	3	Prahladbhai P. Patel	05.11.2003	09.03.2004
1335	4	Kirti Joshi	05.11.2003	23.07.2004
1910	5	Thanmal Juharmal Jain	20.11.2003	15.05.2004
1208	7	Mahesh N Patel	02.02.2004	17.05.2004

3. The main contents of the aforesaid FIR given by the

Police Inspector, DCB Crime Branch are to the effect that accused No. 1 Mohd. Yasin @ Prem is connected with and is a member of Lashkar-e-Toiba, a banned terrorist organization and is also closely working with suspect and absconding accused Mohd. Ashar, a resident of Pakistan and an agent of ISI which is also alleged to be one of the chief sources of supply of money to the said accused. It is the prosecution case that ostensibly aggrieved by the plight of Muslim community in aftermath of Godhra incident, accused No. 1 sent huge sums from Dubai to his son – accused No. 2 Mohd. Kasim at Ahmedabad, which was to be used for preparatory work of terrorist attacks by imparting training to the youth for destabilizing the nation. The youth was instigated systematically in the name of religion and "Jehad". The said amounts were transferred by angadia firm called "Patel On-line" through accused Nos. 5, 3, 4 and 7 by way of hawala transactions. On secret information from the Central Intelligence Bureau, a close scrutiny over the activities of accused Nos. 1 and 2 was kept and on receipt of confidential envelop and cassette, a raid was carried out on 4.11.2003 on the flat owned by accused Nos. 1 and 2 at Ahmedabad where a firearm AK 47 worth Rs.15,00,000/- and 60 live cartridges with two magazines are alleged to have been found. As the possible use of the weapons and the money received through hawala were alleged to be for spreading the terrorist network and for creating terror in the minds of people as well as shaking the integrity and unity of the country, the provisions of POTA were invoked.

4. After the charge sheet was filed, accused Nos. 3, 4, 5 and 7 filed applications for bail pending trial.

4.1 Accused No. 3 contended that he was merely an employee of Patel On-line Angadia Services at Ahmedabad. He had no clue as to from where the money was being received and delivered and for what purpose the same were used. It was contended that accused No. 3 had no knowledge of the money having been collected for “Jehadi” activity or that he was communicated anything by accused No. 2 as regards the same. That the amounts were transferred in the regular course of business of the firm and that no extra money was charged for the transfer of the amounts other than in the regular course of business. As far as accused Nos. 4 and 7 are concerned, earlier accused No. 7 was a partner of Patel On-line firm, alongwith two others and thereafter on reconstitution of the firm, accused No. 4 replaced accused No. 7. Accused Nos. 3, 4 and 7 claimed that theirs was the role of a postman and it was not for them to check the end use of the moneys being transferred and to go into the question of legality or illegality of their use. As the angadia firms are known for the speedy and efficient services, even if the transactions in question are hawala transactions, they may be guilty of any other offence, but not under the POTA. It was also contended that the confessional statements obtained from these three accused were not voluntary and that the confessional statements do not contain any material so as to fasten them with liability under POTA.

4.2 On the other hand, the learned Public Prosecutor contended that apart from the fact that the previous bail applications filed by the accused were dismissed, the

applications were being decided within one year from the date of arrest, on the basis of the material on record, it cannot be said that accused Nos. 4 and 5 were not guilty so as to enlarge them on bail under Section 49(7) of the Act. It was further submitted that in any view of the matter, the hawala transactions were being surreptitiously carried out without maintaining any accounts and after recording the transactions on chits which were being destroyed within 15 days. The transactions involving large amounts were not allowed to be handled by other employees, but they were only being handled by accused Nos. 3 and 4 at Mumbai and accused No. 5 at Ahmedabad.

4.3 After hearing the learned advocates for the accused and the learned Public Prosecutor, the learned Special Judge (POTA) dismissed all the bail applications of accused Nos. 3, 4 and 5. The said accused also filed discharge applications which came to be dismissed by the learned Special Judge (POTA).

5. Criminal Appeal No. 1910 of 2004 is filed by accused No. 5 - Thanmal Juharmal Jain against the order dated 15.5.2004 rejecting his application for bail pending trial. The case against the said accused is that moneys were being sent by accused No. 1 to Mumbai and it was this accused (Thanmal Juharmal Jain) who used to handover the moneys to Patel On-line at Mumbai for their remission to Ahmedabad where accused No. 2 Mohd. Kasim used to collect from Patel On-line firm and then spend the same for jehadi trainees. The case of this accused was that he used to receive a small percentage of commission for handing over the moneys

of the Patel On-line for onward transmission from Mumbai to Ahmedabad and he cannot be said to be guilty of any offence committed by accused Nos. 1 and 2.

6. All the appeals were heard together. After the arguments, written submissions were submitted by the learned Public Prosecutor and thereafter written submissions have been submitted by all the accused on 14.9.2005.

7. Mr PM Thakker, learned counsel for the three appellants connected with the Patel On-line Firm – accused Nos. 3, 4 and 7 - has submitted that the prosecution had not proved that any terrorist activity had in fact been committed. Secondly, assuming that any preparations were made for any terrorist activity, the appellants had no knowledge about the same. Since the appellants were carrying on the business of an Angadia firm in the name of Patel On-line Services in their capacity as partners or as employees, they cannot be expected to know the purpose for which the moneys were being transferred. It has also been submitted that such transactions were part of their routine business activity. There was nothing to create any suspicion about the use of the moneys. It has also been submitted that the so-called confessional statements of the accused were not given voluntarily, but were given under duress when the accused were in police custody; moreover there is nothing in the so-called confessional statements to implicate accused Nos.3, 4 and 5 in any offence punishable under the POTA. Reliance is placed on the decision in NCT of Delhi vs. Navjyot Sandhu, 2005 (7)

Judgments Today 1 in support of the contention that the confessional statement recorded under section 32 POTA cannot be used against a co-accused.

Strong reliance is also placed on the decision dated 31.5.2004 of the Delhi High Court in **RP Goyal vs. Union of India (Criminal Appeal No. 274 of 2004)** in support of the contention that mere delivery of money to a person who is subsequently charged with the offence punishable under the POTA will not bring the case of the appellant within the ambit of Section 22 of the POTA, as no knowledge about the money being used for the purposes of terrorism, a condition precedent to book a person under the said Section, has been attributed to the accused.

8. Similarly, Ms Rohini Acharya, learned counsel for accused No. 5 - Thanmal Juharmal Jain has made similar submissions.

9. On the other hand, Mr AD Oza, learned Public Prosecutor has opposed all the appeals and submitted that the learned Special Judge (POTA) has considered all the relevant aspects and dismissed the applications for bail pending trial and that the orders of the learned Special Judge (POTA) did not deserve to be disturbed. Apart from defending the orders on merits, the learned Public Prosecutor further submitted that since the orders were passed by the learned Special Judge (POTA) under Section 49(7) of the POTA within one year from the date of arrest, the accused cannot be permitted to pray for bail on the basis that the period of one year is over and, therefore,

this Court should consider the present appeals as if they are bail applications under Section 439 of the Cr PC. The Central Review Committee constituted under the POTA (Repeal) Act, 2004 and headed by Hon'ble Mr Justice SC Jain has come to the conclusion that there is prima facie material to continue the proceedings against the present appellants under the POTA.

The learned Public Prosecutor relied upon the following paragraphs of the said Review Committee in their report dated 21.5.2005 :-

> "18. The Review Committee has carefully gone through the confessional statements of the accused Kirtibhai Joshi, Thanmal @ Marwadikaka, Prahladbhai Patel and Maheshbhai Patel. There are some minor differences in the confessional statements of Maheshbhai and Kirtibhai but these have no bearing on their involvement in the hawala transactions. It is on record that these operators had an inkling of the illegal end use of the money being sent from Dubai through them. Utmost secrecy was maintained about these transactions and the main handling these transactions was being paid extra to ensure secrecy. The money landed in the hands of accused Mohammad Kasim Noor amongst others who had used it for financing terrorist activities. The accused persons could not have been oblivious of what was happening in Gujarat, especially in view of the confessional statement of accused Thanmal that he was told by the owners of Patel Online Services that they were aware of the big racket going on in Gujarat. The confession of an accused recorded u/s.32 of POTA may not be substantive evidence against co-accused but it certainly is evidence, howsoever weak.
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> 19. Regarding the contention that accused Maheshbhai Patel had injuries on his body clearly indicating that he was tortured for extracting confession and, therefore, the confession is not voluntary. The Review Committee has considered this issue and is of the view

> that only the trial Court can decide on this issue after considering all the evidence.
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> 20. From the act and conduct of the accused persons namely, Kirtibhai Joshi, Prahladbhai Patel, Maheshbhai Patel and Thanmal @ Marwadikaka, it can easily be inferred that they had reasonable cause to suspect that the money passing through them will or may be used for terrorist purposes."

10. Since the confessional statements of the accused were recorded between 12th November 2003 and 6th February 2004, a brief account of the confessional statements is given in chronological order.

11. Accused No.3 – Prahladbhai Prabhudas Patel aged about 32 years and residing at Ahmedabad stated in his statement dated 12.11.2003 that he is an employee of a courier firm known as angadia firm - Patel On-line Services at its Head Office at Ratan Pole in Ahmedabad. Patel On-line Services Firm is doing business for the last three years. It has two partners working at Mumbai – (i) Mahendrabhai Haribhai Patel and (ii) Maheshbhai Narsinhbhai Patel (accused No. 7). Mahendrabhai was taken by the Crime Branch Police, Mumbai for some inquiry and thereafter Maheshbhai got a new partnership deed prepared in which his name was removed as a partner and Kirtibhai (accused No. 4) was shown as a partner so that in future Maheshbhai would not figure as a partner on paper and for being an ostensible partner, Kirtibhai is being given Rs.50,000/- per year. Thus, on paper the partners are Mahendrabhai and Kirtibhai, but in reality the partners of the firm are Mahendrabhai and Maheshbhai. This accused (Prahladbhai) further stated that he was being paid monthly salary of Rs.10,000/-. Kirtibhai

Joshi (accused No. 4) handles cash transactions at Bhuleshwar Branch (Mumbai) of the firm. For the transactions involving cash amounts upto Rs.30,000/- the entries are made in the account books but if the amounts are in excess of Rs.30,000/-, hawalas are made through phone and the recipient is informed. The Ahmedabad office of the firm is handling cash transactions of about Rs.4 to 5 lacs per day and the amount of about Rs.8 to 10 lacs is kept as reserve cash. All the payments of cash amounts through hawalas are made as per the instructions of Maheshbhai and Mahendrabhai and their instructions through Kirtibhai on telephone. The complete information about the persons giving the hawala amounts at Mumbai is available with the sheth (employer) and Kirtibhai. Since the commission on large amounts is at a higher rate, the entries are not made in the books of account. The acknowledgment chits regarding such payments made are destroyed after 15 days. Accused No. 3 further stated that as per the instructions of the sheth (employer), they were not making any attempt to find out the true identity of the person collecting hawala moneys. There is a marwadi person aged 60 years at Mumbai who deals in marriage invitation cards and is known as “kaka” in Mumbai. The employees of the firm at Mumbai were going to his place for collecting hawala amounts. These employees as well as Mahendrabhai and Maheshbhai also know him very well. If the cash amounts are more than Rs.1 to 2 lacs, the employees of Patel On-line go to that kaka's place. If the amounts are smaller, then some one from kaka's place would come and hand over the cash amount.

This kaka was delivering cash amounts of Rs.5 to 6 lacs to the Bombay office of Patel ON-line. Kirtibhai and the employer were informing Prahladbhai about these transactions. The said Mahendrabhai had relations with the people from Dubai and he used to send their amounts to persons whose names and phone numbers or fax numbers were given. The amounts were thus being sent to Kasimbhai (accused No. 2) in Ahmedabad who is under arrest and others. Instructions were received from Sheth (employer) at Mumbai through Kirtibhai on phone and accordingly Prahladbhai used to call Kasimbhai for collecting the money. Kasimbhai was paid on an average Rs. 5 to 6 lakhs every month for the last three years. After paying the amounts, his signature would be taken on slips and thereafter the slips would be destroyed.

This accused No. 3 – Prahladbhai was paying the amounts to Kasimbhai (accused No.2) so long as this accused was handling the Ratanpole Office of the firm. One year prior to the date of making of the statement, this accused No. 3 went to the Ashram Road Branch and another employee called Mukeshbhai Patel at the Ratanpole office used to handover the amounts to Kasimbhai.

After the aforesaid confessional statement was given by accused No. 3 Prahladbhai on 14.11.2003, the said accused signed on each page on 14.11.2003 and when he was produced before the learned Chief Metropolitan Magistrate, the following endorsement was made by the learned Chief Metropolitan Magistrate :-

> "Accused produced before me at 10.40 AM. No complaint of any ill-treatment. The statement is read over to the accused and he admits that he admitted before the police and he has signed before me on every page of the statement."

12. Accused No. 2 gave his confessional statement dated 17.11.2003 to the effect that his father-accused No. 1 had sent Rs. 25 to 30 lakhs from Dubai by hawala transactions through Patel On-line Services and that Prahladbhai (accused No. 3) and Maheshbhai (accused No. 7) used to handover the cash to him. All these amounts were distributed by him as an ISI agent. Some of these amounts were spent for help to the community and some amounts for jehadi activities. He was informed by his father that Raval (first name for accused No.1) was making arrangements for providing weapons to Muslims in Gujarat and at Ahmedabad. Accused No. 2 further stated that his father accused No. 1 was arranging for Visas for Dubai and that the accused Nos. 1 and 2 also possessed the AK 47 rifle and cartridges in their flat at Juhapura and that plans were made for assassinating some big leaders of Gujarat or in a thickly populated public places. This accused was also produced before the learned Chief Metropolitan Magistrate and similar endorsement was made about the voluntary nature of the statement.

13. On 20.11.2003, the confessional statement of accused No. 4 - Kirtibhai M Joshi was recorded. He stated that after the Mumbai Crime Branch Police had taken Mahendrabhai for some inquiry about two years back, Maheshbhai had got

his name removed from the partnership and another partnership deed was prepared in which the name of Kirtibhai was shown as a partner and for that purpose he was being paid Rs.50,000/- and monthly salary of Rs.20,000/- was being paid to him. All the employees of Patel On-line firm were working as per the instructions of Mahendrabhai and Maheshbhai. For making payment of cash amounts in excess of Rs.30,000/- only slips were being prepared and were destroyed after 15 days. A marwadi person aged about 60 years known as “kaka” in Mumbai was sending Rs. 5 to 6 lakhs every day to be handed over to different persons. That kaka had contacts with the people in Dubai. The kaka had sent the amounts to Kasim @ Khanbhai (accused No.2) - Rs. 5 to 6 lakhs per month for the last three years. Kirtibhai further stated in his statement that after he was arrested, he was told by Mahendrabhai and Maheshbhai on telephone that Kirtibhai was not to disclose any true facts about the money transactions of the firm or the constitution of the firm and that Kirtibhai should take over the responsibility, but the role of Mahendrabhai and Maheshbhai should not be disclosed. This accused was also produced before the learned Chief Metropolitan Magistrate on 21.11.2003 and the endorsement about the voluntary nature of the statement was recorded.

14. On 3.12.2003, the statement of Thanmal Juharmal Jain, accused No.5 was recorded. This accused stated that he had settled in Mumbai since 1963. He had earlier worked as an employee with different firms and also worked as commission agent. From 1998, he had worked as an employee of an angadia firm called “Atul Express” which was doing

hawala transactions for Hajibhai of Dubai. Since he was in poor financial condition, he contacted Hajibhai of Dubai on telephone requesting him to give him the hawala business. He knows metal traders who wanted to send their moneys to Dubai. This accused used to collect their amounts as per the instructions of Hajibhai and hand over to Patel On-line Services. Hajibhai used to talk to the people in Patel On-line giving them instructions as to which persons the moneys were to be handed over. As per the instructions of Hajibhai, this accused deposited the amounts in the account of Bharat Shah. Hajibhai used to have hawala transactions of about Rs.20 lakhs per month and this accused was given commission at the rate of Rs.300 per every lakh. When this accused inquired of Hajibhai as to whom the moneys were being sent, Hajibhai did not give any reply. When this accused inquired from the owner and employees of Patel On-line services, they did not give the names of the persons, but told him that a big racket is going on in Gujarat and in aid thereof, moneys were being sent. This accused was produced before the learned Chief Metropolitan Magistrate on 4.12.2003 and voluntary nature of the statement was recorded, there was no complaint of ill-treatment.

15. On 6.2.2004, the statement of accused No. 7 – Maheshbhai N. Patel was recorded. The said accused was residing at Mumbai. The details about hawala transactions are not recorded in the account books, but on the loose slips of paper which are destroyed after 15 days. Kirtibhai Joshi and Prahladbhai used to maintain secrecy of these transactions. The people involved in these hawala

transactions do not give their address but give the telephone numbers or other indications. This accused also knows Thanmal Juharmal Jain (accused No. 5), a hawala operator in Mumbai with contacts at Dubai. The amounts were being sent through Patel On-line with instructions given by Mahendrabhai, Maheshbhai and Kirtibhai. Rs. 25 to 40 lakhs were thus sent for hawala operations from Mumbai to Ahmedabad. The aforesaid amounts were paid to Kasim Noor @ Khanbhai (accused No. 2). This accused stated that himself, Mukundbhai and Mahendrabhai are the partners of the firm and Kirtibhai and Prahladbhai were knowing about the purpose for which the moneys were being received and the illegal activities for which the moneys were used. This accused further stated that in order to see that his name and the name of his brother did not remain on paper, the partnership firm was reconstituted to show the name of Mahendrabhai and Kirtibhai Joshi as partners of the firm and Kirtibhai was being paid Rs.50,000/- per month in order to show him as a partner on paper. The real partners of Patel On-line firm are Maheshbhai (accused No.7), Mahendrabhai and Mukundbhai. Kirtibhai (accused No.7) was their main person looking after their business at Mumbai and Prahladbhai (accused No.3) was their main person looking after their business at Ahmedabad. Prahladbhai Patel was also paid higher amount than was shown in the account books. Both Prahladbhai and Kirtibhai were instructed by this accused not to make any disclosures and that they would meet with the expenses for Court cases. The Bombay Crime Branch Police had arrested this accused Maheshbhai and others with cash amount of Rs.68 lakhs. This accused was also produced before the learned Chief

Metropolitan Magistrate on 16.2.2004 and the endorsement was made recording that this accused admitted the voluntary nature of the statement and there was no complaint of ill-treatment.

16. The submission that in the first place there was no terrorist activity cannot be accepted in view of seizure of AK 47 gun and 60 cartridges from the flat of accused No. 1 and 2 at Juhapura.

17. We have noted the submission made by the learned counsel for the appellants that the statement of a co-accused is not to be treated as admissible against another co-accused as held in NCT Delhi vs. Navjyot Sandhu, 2005 (7) Judgments Today (SC) Page 1. Even proceeding on the basis that such prohibition would apply not only at the stage of trial, but also at the stage of consideration of bail application, we find that independent of the statements of the other co-accused, each accused has independently admitted that large amounts were being received by the Bombay office of Patel On-line firm for remission to accused No. 2 and other persons. It is also admitted by each accused that the such amounts running into lakhs of rupees every month were being transferred without making any entry. As per the confessional statements, such amounts were to the tune of Rs.5 to 6 lakhs per month for three years.

18. The submission of the learned counsel for the appellants is that even if handling of such large amounts in cash amounted to any offence under the Income-tax Act or

any other Act, the accused cannot be imputed with the knowledge that moneys were being used for terrorist activities. However, the contents of the statements which are briefly set out hereinabove, do indicate that the accused were aware that moneys were being sent from Dubai to Mumbai and then to Ahmedabad where the amounts were paid to accused No. 2 and others.

19. In RP Goyal vs. Union of India (supra), a Division Bench of the Delhi High Court has interpreted the provisions of Sections 3 and 22 of the POTA to mean that distribution of money or raising of funds simplicitor, without knowledge about its user would not attract the provisions of Section 3 or 22 of the POTA. To attract the said Sections, it is necessary that the accused has acted with intention of furthering or encouraging terrorist activity or facilitating its commission. In order to bring a particular case within the ambit of Section 22 (3) of the POTA, the knowledge or even a reasonable cause to suspect that the money provided will be used for the purposes of terrorism, is a pre-requisite and knowledge of the end user of the money/funds provided is the sine qua non for the applicability of Section 22(3) of the POTA.

In the facts of the present case, the manner in which accused No. 5 – Thanmal Juharmal Jain was handing over large amounts of money running into lakhs of rupees to Patel On-line at Mumbai and that too in the name of Bharat Shah for paying such amounts to the parties like accused No. 2 in Ahmedabad is sufficient to give a reasonable cause to the accused to suspect that the moneys were intended to

be used for some nefarious activity. The very fact that after Mahendrabhai, elder brother of accused No. 7 – Maheshbhai was taken by the Bombay Crime Branch for some inquiry/interrogation, there was a reconstitution of the partnership firm to remove the name of accused No. 7 Maheshbhai and to induct the name of accused No. 4 Kirtibhai Joshi and for this purpose Kirtibhai Joshi was being paid Rs.50,000/- per month over and above the monthly salary of Rs.20,000/- prima facie indicates that accused Nos. 4 and 7 had reasonable cause to suspect that the moneys being sent by accused No. 5 in the name of Bharat Shah but received from 7 hawala operators which was intended to be used for serious criminal activity at Ahmedabad. As held by the Apex Court in **State of Maharashtra vs. Som Nath Thapa, (1996) 4 SCC 659** when the accused are charged with the offence of conspiracy and Section 3(3) of the POTA also has some common ingredient viz. Section 120B, it is not necessary that the accused transferring moneys from one link of chain to another link of chain would be aware of the activities and the purpose on either side of the chain.

20. As regards the contention that the confessions were not voluntary, it is not possible to accept this contention at this stage. When the appellant-accused after they made the statements were produced before the learned Chief Metropolitan Magistrate at Ahmedabad, the learned Chief Metropolitan Magistrate made endorsements below the respective confessional statements that the accused did not complain of any ill-treatment and that they admitted that the statements were made voluntarily. It is not possible

to hold at this stage that the confessions of the accused were obtained under coercion or duress and that they were not voluntarily made.

21. It is submitted that since the POTA review exercise was undertaken by the Review Committee before the judgment of the Hon'ble Supreme Court in the case of NCT of Delhi vs. Navjyot Sandhu (Supra), the Committee had relied upon the statement of the co-accused. The said decision would certainly be considered at the time of the trial to decide whether the statements of the other accused would be admissible or not, but at this stage it is not possible to hold that the confessional statements of the accused do not contain the prima facie material indicating commission of offence under the POTA. Sub-section 3(3) of POTA reads as under :-

> "**3. Punishment for terrorist acts.-** (1) Whoever,-
>
> (3) whoever conspires or attempts to commit, or advocates,abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

22. It is contended on behalf of the appellants that the appellant did not have any reason to believe or suspect about any terrorist activity by any other accused or any other person as there was not a single incident of any terrorist activity on record. It cannot be overlooked that after the Godhra incident on 27th February, 2002, a sudden flow of such cash amounts from Dubai to Ahmedabad to be

paid to the persons without any ostensible business was enough reason to put the appellants to inquiry. In the normal angadia business, whenever any parcels are sent, such articles are sent in parcels bearing the name and address of the consignee with phone number. The fact that no such particulars were mentioned and the person collecting the amounts was required to give code-word like currency note numbers would indicate that the recipient of the amounts were not carrying on any regular business or occupation and were trying to conceal their identity. The contention that some amounts were spent for charitable purposes cannot wipe out the fact that accused No. 2 had also spent some amounts for AK 47 Rifle and cartridges.

23. It is contended on behalf of the appellants that handling large cash amounts in the manner in question may amount to violation of the provisions of the Income-tax Act, Customs Act and Excise Act, but that would not mean that the appellants were aiding or abetting any terrorist activity. It is not the case of the appellants that the senders or recipients of such large amounts were doing any ostensible business and that the moneys were being transferred to any Company or a business firm. Similarly, the senders or recipients of such large amounts of money are not shown to be, nor known to the accused as, any charitable trust or such institution. Hence, it cannot be said that the appellants did not have any reason to believe or suspect that the transfer of moneys were for nefarious activities like terrorism.

24. As regards the contention that the accused are mere

employees of Patel On-line firm and, therefore, they may not be saddled with the liability for handing over such large amounts for the alleged activities, as per the confessional statements of all the accused, Mahesbhbhai (accused No. 7) was a partner in Patel On-line firm, but after his brother Mahendrabhai was taken by CBI for certain inquiries, he got his name removed from the partnership firm and a new partnership firm was constituted by inducting Kirtibhai Joshi (accused No.4) as the partner and he was being paid a sum of Rs.50,000/- per month for showing him an an ostensible partner. This conduct is prima facie sufficient to implicate both Maheshbhai (accused No. 7) and Kirtibhai Joshi (accused No. 4) - they were aware about the nature, gravity and magnitude of the activities for which large amounts of moneys were being transferred through Patel On-line Services.

25. As regards Prahladbhai (accused No.3), he is shown to be an employee of Ahmedabad, but it is the case of the appellants that he was the main person of Patel On-line firm at Ahmedabad. He was handing over the amounts to accused No. 2 and other parties. As per his confessional statement he was also aware that after Mahendrabhai was taken by the Crime Branch Police, Mumbai for some inquiry, Maheshbhai got a new partnership deed prepared in which his name was removed as a partner and and Kiritbhai was shown as a partner. He was also aware that there is a marwadi person at Mumbai who hands over large amounts of money to the firm which are handed over to the parties at Ahmedabad. As per the confessional statements of this accused as well as the persons at Mumbai, this accused was one of the five

persons who were aware of the transactions and maintaining secrecy. Hence, merely because this accused (accused No. 3) was an employee, it does not mean that he did not know the purposes for which the moneys were being transferred through Patel On-line firm. Even so, considering the principles laid down by the Apex Court in **Shaheen Welfare Association vs. Union of India, (1996) 2 SCC 616,** a pragmatic approach would require slightly different treatment for accused No. 3 who is shown to be an employee. Since the accused has been in jail for almost two years, it would be just and proper to observe that in case the accused has to remain in jail as an under-trial prisoner for three years without the trial being completed, it will be open to accused No. 3 to move the Special Court. POTA with a fresh bail application.

26. In view of the above discussion, we find that the learned Special Judge, POTA, Ahmedabad did not err in holding that the appellants of these appeals have not made out any case for being enlarged on bail pending the trial. We are also of the view that in the facts and circumstances of the case and looking to the gravity of the offences, severity of punishment and impact on the society, as discussed above, no discretion is required to be exercised in favour of the appellants even on the basis of considering their applications on the touch stone of factors relevant for granting bail under Section 439 of the Code of Criminal Procedure, 1973. We make it clear that the observations made in this judgment are only for the purpose of deciding the prayer for bail pending trial.

27. In the result, subject to the observations made in para 25 hereinabove, the appeals are dismissed. The Special Court, POTA, Ahmedabad shall complete the trial of POTA Case No. 3 of 2004 as expeditiously as possible.

[M.S. SHAH, J.] [BANKIM N. MEHTA, J.]

sundar/-